

### **REMARKS**

Claims 1-18 have been examined. Claims 1, 9 and 11 have been rejected under the Doctrine of Obviousness-type double patenting, claims 2 and 5 have been rejected under 35 U.S.C. § 102(e), and claims 8 and 10 have been rejected under 35 U.S.C. § 103(a). Also, the Examiner has indicated that claims 12-18 are allowed, and claims 3, 4, 6 and 7 contain allowable subject matter.

#### **I. Preliminary Matters**

The Examiner has objected to claim 7 due to minor informalities. Accordingly, Applicant has amended claim 7 as suggested by the Examiner to correct the dependency. Although the Application is currently after final rejection, Applicant respectfully requests that the amendment be entered, since such amendment was requested by the Examiner, and further such amendment was discussed during the Examiner Interview of May 6, 2004.

#### **II. Double Patenting Rejection**

The Examiner has rejected claims 1, 9 and 11 under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent 6,315,468 to Kishida et al. ("Kishida").

##### **A. Claim 1**

Claim 1 recites that a stopping position of a carriage in a mount portion of a capping device is adjusted based on adjustment information of a platen gap adjuster.

The Examiner maintains that in claim 1 of Kishida, a gap between the recording heads and a capping device can be judged to be a predetermined distance in proportion to the thickness of the printing medium (i.e. the thickness of the printing medium decides the gap between the recording heads and the capping device) (top of pg. 4 of Office Action). The Examiner then maintains that the stopping position of claim 1 of the present Application is also varied or based upon a thickness of a printing medium.

However, as noted during the Examiner Interview of May 6, 2004, the dimensional comparisons in each of claim 1 of the present Application and claim 1 of Kishida are fundamentally different. For example, contrary to the Examiner's assertions above, claim 1 of Kishida fails to recite that a gap is adjusted between a recording head and a capping device. Rather, as noted during the Examiner Interview, the claim recites that a space between the recording head and a printing medium is adjusted. On the other hand, in claim 1 of the present Application, a stopping position of the carriage (e.g. recording head) in the mount portion of the capping device is adjusted. Therefore, Kishida recites an adjustment between a recording head and a "printing medium", while claim 1 of the present invention recites an adjustment between a recording head and a "capping device".

Further, as discussed during the May 6, 2004 Examiner Interview, the control means of Kishida is for driving a platen-gap regulating means to hold a fixed relative position between recording heads and a capping means, and the recording heads and a cleaning member. In other words, the platen-gap regulating means of Kishida is driven "to hold" a fixed position when the recording head is located in a cleaning position. On the other hand, claim 1 of the present

Application “adjusts” a stopping position based on information of a platen gap adjuster.

Applicant submits that recitations to “hold” and to “adjust” are not analogous. Thus, for at least these reasons, Applicant submits that claim 1 is not rendered obvious over claim 1 of Kishida.

During the May 6, 2004 Examiner Interview, the Examiner indicated that the above arguments/distinctions appear reasonable. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the double-patenting rejection.

**B. Claim 9**

Claim 9 recites that a flushing requirement is judged as to whether or not a flushing operation is required. In other words, a flushing operation may or may not be required.

The Examiner maintains that claim 9 is unpatentable over claim 3 of Kishida. On pages 6 and 7 of the Office Action, the Examiner discusses that Kishida “may” contain a flushing operation. However, whether Kishida discloses a flushing “operation” is not in dispute. Rather, as discussed during the May 6, 2004 Examiner Interview, claim 3 of Kishida does not suggest a flushing “requirement”. In particular, claim 3 of Kishida does not suggest judging a flushing requirement to see whether or not a flushing operation is required. Rather, the only “judging” performed in claim 3 of Kishida, is to judge a gap between a nozzle opening surface to a capping unit.

Further, in claim 3 of Kishida, cleaning will always be performed once a cleaning instruction is received. For example, the claim recites, “upon receiving a cleaning instruction.” Therefore, once the cleaning instruction of Kishida is received, the ink jet recording apparatus

judges a gap between a nozzle opening surface and a capping unit to see if the gap is a predetermined distance for performance of the cleaning. If the gap is not the predetermined distance, it is controlled to become the predetermined distance. After the gap is controlled to be the predetermined distance, cleaning of the recording heads is (and always will be) commenced.

Accordingly, the judging of a gap in claim 3 of Kishida is not equivalent to the judging of a flushing requirement of claim 9 of the present Application. In other words, once the cleaning control method of claim 3 of Kishida progresses to the judgment portion of the method, it has already been determined that cleaning of the recording head is to be performed. Therefore, Applicant submits that claim 3 of Kishida does not suggest judging a flushing requirement to see whether or not a flushing operation is required.

During the May 6, 2004 Examiner Interview, the Examiner indicated that the above arguments/distinctions appear reasonable. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the double-patenting rejection.

#### **C. Claim 11**

Since the judgment of a capping requirement of claim 11 is analogous to the judgment of a flushing requirement of claim 9, Applicant submits that claim 11 is not rendered obvious over claim 3 of Kishida for analogous reasons as presented above. For example, claim 11 recites, “judging a capping requirement as to whether or not the ink jet recording head is required to be advanced to a capping condition.” On the other hand, claim 3 of Kishida recites, “judging a gap

between said nozzle opening surface and said capping unit.” Applicant submits that judging whether a capping requirement is required is not analogous to the judgment of a gap.

Accordingly, for similar reasons as set forth in claim 9, Applicant respectfully requests the Examiner to reconsider and withdraw the double patenting rejection.

**III. Rejection Under 35 U.S.C. § 102(e) over U.S. Patent No. 6,315,468 to Kishida et al. (“Kishida”).**

Claims 2 and 5 are rejected under 35 U.S.C. § 102(e) as being anticipated by Kishida.

However, since claims 2 and 5 are dependent upon claim 1, Applicant submits that such claims are patentable at least by virtue of their dependency.

In addition, as indicated during the May 6, 2004 Examiner Interview, claim 1 was not rejected under 35 U.S.C. § 102(e) over Kishida, and therefore, the rejection of dependent claims 2 and 5 appears improper.

**IV. Rejection Under 35 U.S.C. § 103(a) over Kishida.**

Claims 8 and 10 have been rejected under 35 U.S.C. § 103(a) as being obvious over Kishida. However, as noted by the Examiner, Kishida and the present application are both assigned to Seiko Epson Corporation. Accordingly, Applicant asserts that the subject matter of Kishida and the claimed invention were subject to a common obligation of assignment pursuant

Amendment under 37 C.F.R. § 1.116  
U.S. Application No. 10/068,007

to MPEP 706.02(l)(2) and 35 U.S.C. § 103(c). This demonstration of common obligation of assignment removes Kishida as a reference, which in turn, overcomes the 35 U.S.C. §103 rejections of claims 8 and 10. Applicant submits a copy of the assignment documents for Kishida (Reel 009755, Frame 0899, Date recorded 02/02/1999) and the current Application (Reel 012819, Frame 0065, Date recorded 04/19/2002) for the Examiner's review.

In view of the above, Applicant submits that Kishida is not a citable prior art reference under 35 U.S.C. § 103(a).

In addition, since claims 1 and 10 are not rejected under 35 U.S.C. § 103(a) over Kishida, it appears that the rejection of claims 8 and 10 is improper.

#### **V. Allowable Subject Matter**

As stated above, the Examiner has indicated that claims 12-18 are allowed, and claims 3, 4, 6 and 7 contain allowable subject matter.

#### **V. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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Allison M. Tulino  
Registration No. 48,294  
Date: May 10, 2004

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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